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10/663,225

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Kenneth R. Stott

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09/13/2006

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EXAMINER

SZMAL, BRIAN SCOTT

ART UNIT

PAPER NUMBER

3736

DATE MAILED: 09/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/663,225

Applicant(s)

STOTT ET AL.

Examiner

Brian Szmaj

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 32-50 is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 12-17, 21-25, 27, 28, 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rho (6,425,485 B1) in view of Brown (6,168,563 B1).

Rho teaches an Internet interface for a computer based automated hearing test. The interface is employed with a computer having a display screen and a transducer for providing test sounds. The interface includes a patient information component configured to allow an operator or a patient to enter the patient's information into the automated hearing test (S13); a patient testing component configured to allow a patient to administer a hearing test to himself by causing the patient to interact with the automated hearing test during a hearing related test (S17-S19); and a reporting component configured to present a result of the patient's hearing test (S37). The patient information component comprises a new session screen for entering basic information about the patient and listing available hearing tests. A pure sound (tone) threshold response screen allows the patient to respond during a pure tone threshold test using on-screen buttons which the patient may press in response to hearing a tone. A patient survey screen is provided for gathering hearing related information about the patient. A report screen displays a report of the result of the patient's hearing test and can be viewed as a web page using a web browser or accessed from a network connection. A

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patient training component instructs the patient regarding operation of the automated hearing test. A patient management component manages the patient during the automated hearing test. A system configuration component allows the operator to configure the automated hearing test. Rho teaches all of the limitations of the claims except that the reporting component presents the results in a graphical format, where the result includes data from the patient information component and the patient testing component. Rho teaches that the result is displayed as a threshold value and a hearing hardness grade. Applicant has not disclosed that reporting results in a graphical format including data from the patient information component and the patient testing component solves any stated problem or is for any particular purpose.

Brown teaches a remote health monitoring and maintenance system that operates over the Internet. The system includes a reporting component (Figure 21) that reports results of a test in a graphical format and including data from the patient information component (i.e., patient name and test date) and the patient testing component for ease in review of the test results.

It would have been obvious to one of ordinary skill in the art at the time the of Applicant's invention to provide the system of Rho with a reporting component similar to that of Brown, combining data from the patient information component (such as patient name) and from the patient testing component (such as a graphical audiogram result indicating which/when test sounds were detected at a plurality of frequencies) in order to provide a simple format for test result review by the patient or a hearing health professional.

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3. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rho (6,425,485 B1) in view of Brown (6,168,563 B1), as applied to claim 13 above and further in view of Pavlakos (2002/0076056 A1).

Rho, as modified by Brown above, teach all of the limitations of the claims except that the reporting component further comprises a search screen for searching previously saved reports, a results screen that satisfies previously saved reports that satisfy one or more search parameters, and comparison screen for displaying a comparison of two reports. Pavlakos teaches an Internet based audiometric testing system that includes the ability to search for reports by providing a range of dates for the system to search, the ability to display the reports corresponding to the date range, and the ability to compare a recent report more prominently than an older report (see Figure 7 and paragraph [0031]). It would have been obvious to one of ordinary skill in the art at the time the of Applicant's invention to provide the system of Rho, as modified by Brown, with a search screen, results screen and comparison screen in view of the teachings of Pavlakos in order to provide for a more thorough examination of test results by allowing for searching previously saved reports and comparing of a history of reports.

4. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rho (6,425,485 B1) in view of Brown (6,168,563 B1), as applied to claim 24 above and further in view of Edwards et al. (2003/0083591 A1).

Rho, as modified by Brown above, teach all of the limitations of the claims except that the patient management component comprises a progress indicator. Edwards et al.

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teach a system and method for remotely administered, interactive hearing tests.

Paragraph [0113], lines 16-17, teaches that this web-based system having an interface that includes a progress bar (see Fig. 19 and 20) for indicating the progress of the patient during the automated hearing test. It would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to provide an automated hearing test interface similar to that of Rho, as modified by Brown, with a patient management component having a progress indicator similar to that of Edwards et al. in order to provide an indication of the progress of the patient during the automated hearing test.

Allowable Subject Matter

5. Claims 7-11, 29 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter: Claims 32-49 are allowable since no prior art could be found teaching or suggesting a computer based automated hearing test comprising: the patient testing component presenting audio and visual instructions for causing the patient to interact with the automated hearing test during the hearing related test, as claimed in Claim 32. Claim 50 remains allowable per the reasons set forth in the Office Action mailed on March 13, 2006.

Response to Arguments

7. Applicant's arguments filed July 13, 2006 have been fully considered but they are not persuasive. The Examiner respectfully traverses the arguments regarding Claim 1, as rejected by Rho and Edwards et al. The Applicants argue Rho provides a result that the user can interpret, albeit as a textual output, while Brown provides a graphical output for healthcare professionals to interpret. It is well known in the art that a textual output can also be placed into a graphical output utilizing the same data.

8. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Rho provides a user-administered hearing test, while Brown, Edwards et al and Pavlakos disclose means for healthcare professionals to administer hearing tests over a network. The motivation to combine the references is based upon the fact that Rho, Brown, Edwards et al and Pavlakos all disclose means for administering hearing tests to a user, regardless of whether the test is self-administered or if the hearing test is administered by a healthcare professional.

Conclusion

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9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Szmalec whose telephone number is (571) 272-4733. The examiner can normally be reached on Monday-Thursday, with Fridays off.

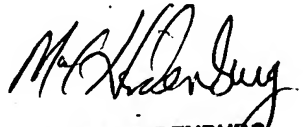
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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